IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1933.

No. 347.

STANDARD OIL COMPANY OF CALIFORNIA,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellee.

PETITION FOR REHEARING

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of California, appellee herein, respectfully petitions this honorable court to grant a rehearing of the above entitled cause.

GROUNDS FOR REHEARING

The decision of this court announced on February 5, 1934, proceeds upon the theory that by the act of March 2, 1897 (Statutes 1897, p. 61), California ceded to the United States exclusive jurisdiction over the Presidio of San Francisco, and "reserved to herself no power whatever in respect of taxation."

This court, in deciding this case against appellee, said:

> "Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; and the judgment below must be reversed."

And in support of its conclusion the court referred to the following cases:

Arlington Hotel Company vs. *Fant,* 278 U. S. 439;

United States vs. *Unzueta,* 281 U. S. 138;

Surplus Trading Co. vs. *Cook,* 281 U. S. 647.

What was entirely overlooked in presenting this case to the court was this:

That section 6 of Article XIII of the Constitution of California of 1879, in effect when the act of

cession was adopted in 1897, and still in effect, reads as follows:

> "The power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party."

This provision of the Constitution prevented the Legislature from passing any act, the effect of which would be to deprive the State of the right to impose *taxes* in respect of sales and deliveries of merchandise within the Presidio.

It must of necessity follow, therefore, that this court was in error in stating:

> "Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the Presidio—put that area beyond the field of operation of her laws. Accordingly, her Legislature could not lay a tax upon transactions begun and concluded therein."

In view of the provision of the Constitution above referred to the act of the Legislature could not have the effect of surrendering or suspending the State's jurisdiction within her exterior boundaries in matters of taxation.

There is no paramount law of the United States which operates of itself to cause the suspension or surrender by the State of her jurisdiction in respect to taxation.

Fort Leavenworth Ry. Co. vs. *Lowe,* 114 U. S. 525.

In the case just cited a reservation in the act of cession relative to taxation of certain property on a military reservation was given full effect. That such reservation of power is contained in the Constitution of a State rather than in a legislative act of cession of jurisdiction can not change the result—the reservation of power in respect to taxation is binding in either event.

It has never been suggested that the application of the Motor Vehicle Fuel Act of California to sales and deliveries of gasoline to the Post Exchange would interfere with the use of the Presidio as a military post. It would be impossible, in our opinion, to prove that such application of the statute would or could have that result.

In view of section 6 of Article XIII of the Constitution of California it seems apparent that the decision of this court in this cause was based upon an incorrect premise, namely, that the Legislature had, by the act of 1897, surrendered the State's power of taxation in respect to the Presidio.

When the true fact is brought to the attention of the court, namely, that the Constitution of the State expressly prohibited the Legislature from making such a surrender of power, and that its attempt to do so was, therefore, necessarily void, a situation is presented where we believe this court

should grant a rehearing to the end that complete justice may be done in this cause.

Our responsibility for failure to bring to the attention of the court the provisions of section 6 of Article XIII of the Constitution is recognized and we regret that this omission occurred, but our duty to the State and to this court compels us to take all proper and necessary steps to obviate the error in the interests of justice and to the end that the law be correctly stated as applied to the true facts.

In the light of the foregoing we respectfully request that our petition for rehearing be granted.

Respectfully submitted.

U. S. WEBB,
Attorney General of the State of California,

H. H. LINNEY,
Deputy Attorney General,
Attorneys for Appellee.

CERTIFICATE OF COUNSEL

I, U. S. Webb, Attorney General of the State of California, and counsel for said State herein, hereby certify that the foregoing Petition for Rehearing of this cause is presented in good faith and is not presented for delay.

U. S. WEBB,
Attorney General
of California.

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APPELLANT'S REPLY TO RESPONDENT'S PETITION FOR A REHEARING.

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APPELLANT'S REPLY TO RESPONDENT'S PETITION FOR A REHEARING.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

In his petition for rehearing the Attorney General of California suggests for the first time that since the California constitution prohibits the surrender of the state's power of taxation by any grant or contract to which the state is a party, the legislative act of cession by which

the state gave to the United States exclusive jurisdiction over the Presidio cannot deprive the state of the power to impose a tax within the Presidio.

While the point is raised in this case at the eleventh hour, it is not a new one. In *Yellowstone Park Transportation Company v. Gallatin County, et al.*, 31 F. (2d) 644, the Circuit Court of Appeals for the Ninth Circuit, opinion by Judge Rudkin, held that a contention similar to that now made by petitioner was without merit, and this court declined to review the decision (280 U. S. 555). Montana had ceded to the United States exclusive jurisdiction over the lands within the state embraced within Yellowstone National Park. The act of cession was unqualified, except, as in the California act, for the reservation of the right to serve and execute civil and criminal process. County taxing officers in Montana sought to impose a tax on personal property within the park belonging to the plaintiff corporation. The contention was made that the act of cession violated the provision of the Montana state constitution declaring that the power to tax corporations or corporate property shall never be relinquished or suspended. The Circuit Court of Appeals said:

> "This contention is without merit. If exclusive jurisdiction over that portion of the park in the state of Montana was lawfully ceded to the United States, the cession inured to the benefit of both corporations and individuals, and the power to tax property in the ceded territory, whether corporate or individual, was at an end . . ."

The decision was based upon the ruling of this court in *Arlington Hotel Co. v. Fant*, 278 U. S. 439, a case

which has since been followed by *Surplus Trading Company v. Cook*, 281 U. S. 138, cited with the *Arlington Hotel Co.* case in the opinion of the court here. The *Surplus Trading Company* case came up from Arkansas. The constitution of that state contains a provision against surrender of state taxing power similar to that in the Montana constitution, but despite the state constitutional prohibition, this court refused to sustain the local tax or to qualify in any way the comprehensive nature of the state cession of exclusive jurisdiction.

The point now raised must, therefore, be dismissed as already having been decided against petitioner in the cases cited by this court in its opinion in this case. There is no material difference for our present purpose between the provisions of the Montana and Arkansas constitutions and that of the California constitution. The former, relating to taxes on corporations and corporate property, are specific and the corresponding provision in the California constitution is general, but the principle is the same. If the specific provision on corporations was found to be inapplicable to the corporation plaintiffs in the *Yellowstone National Park* case and the *Surplus Trading Company* case, there is stronger reason for finding that the California provision has no application here. It may be noted that in the convention which drafted the present California constitution the matter now appearing in Article XIII, Section 6, was originally submitted in the same form as the provisions of the Montana and Arkansas constitutions (Debates of Constitutional Convention, Vol I, pp. 101, 119, 177).

The provision in the California constitution, to which petitioner refers, and similar provisions in other state constitutions, are not designed to interfere with or restrict surrender by a state to federal authority of its jurisdiction for all purposes. They are intended to prevent the creation by a state legislature of a privileged or preferential class of taxpayers.

In *Commonwealth v. United Cigarette Machinery Co.*, 120 Va. 835, 92 S. E. 901, the court said, in commenting upon this form of constitutional provision:

> "It is manifest . . . that the prohibition in question was intended to prevent the extension of favors and discriminations in favor of corporations as against individuals."

The purpose of these provisions is clearly to prevent discriminatory applications of the taxing power as such, and not to forbid a cession of complete jurisdiction, to which the surrender of the taxing power is simply an incident. In the case of cession to the federal government for national defense, there can be no suggestion of special legislation or private advantage.

Furthermore, the constitution of the United States is paramount. Article I, Section 8, Cl. 17, provides that Congress shall have power

> "to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings."

The Presidio is a military reservation. The California legislature has given its consent that the United States

shall have exclusive jurisdiction over all property within the state used by the United States for military purposes.

The act of cession (Stats. California 1897, p. 51) is explicit and unqualified. It is irrevocable, the federal constitutional provision becomes operative, and the ceded territory has become as much without the jurisdiction of the state as any other foreign territory, except in so far as jurisdiction was *expressly* reserved. As just shown, the conventional provision affecting process was not such a reservation, and was not intended as such.

The force of our contention is fully recognized in *Fort Leavenworth Railroad Company v. Lowe*, 114 U. S. 525, the only case cited by the Attorney General in his petition. In that case there was an *express* reservation in the act of cession, of the right to tax privately owned railway property within the territory ceded, and this court gave effect to the reservation. In doing so, however, it stated the general rule when there is no reservation, and the effect of the federal constitutional provision as follows:

> "When the title is acquired by purchase by consent of the Legislatures of the States, the federal jurisdiction is exclusive of all State authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of Congress; and that no other authority can be exercised over them has been the uniform opinion of Federal and State tribunals, and of the Attorneys General."

An analogy may be suggested to show the weakness of petitioner's present position. The legislature has no power to surrender or suspend the police power of the state. Will the Attorney General contend that on this account, and despite the act of cession, state authorities have the right to enforce general state police measures within the Presidio?

During all the time in which this case has been argued and briefed, in the trial court, in the state supreme court, and in this court, no intimation was ever made that the state constitutional provision, cited in the petition for rehearing, had any bearing on the case.

Even though this court were now to consider the point, it must be found to be without merit and determined against petitioner in previous rulings of this court.

We respectfully submit that the petition for rehearing should be denied.

Dated, San Francisco,
February 23, 1934.

OSCAR SUTRO,
FELIX T. SMITH,
VINCENT K. BUTLER, JR.,
Attorneys for Appellant.